THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.25951 of 2003

Dated:07.12.2006

Between
Ankitha Constructions rep., by its
Managing Partner G.Vijay Kumar Reddy
.....Petitioner

and

1.Dy .Registrar of Cooperative Societies
O.S.D. The Aryan Cooperative Urban Bank Ltd.,
Nallakunta, Hyderabad and others.
…Respondents

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ORDER:

This writ petition is filed seeking a Certiorari to call for the records relating to the proceedings in Lr.No.831/ACUBL/03/201 dated 10.10.2003 issued by the Deputy Registrar-Liquidator and to quash the same as illegal and arbitrary.

It is the case of the petitioner that it is a partnership firm and it had taken housing loan for the purpose of construction business from the 2nd respondent Bank. Thereafter, it fell in arrears and was unable to pay the installments regularly. Under those circumstances, the petitioner submitted a letter dated 30.9.2003 to the respondent-bank to consider its case under One Time Settlement Scheme. Through the impugned order, the petitioner was informed that as per Clause 1, sub-clause C (1) of the OTS guidelines, approved by the

Reserve Bank of India and communicated by CC & RCS *vide* proceedings No.3484/2002/UB-1, dated 15.4.2003, cases of willful default in paying instalments were not covered under the said scheme. Hence, the case of the petitioner was not considered as per the guidelines approved by the Reserve Bank of India. It is further asserted that when the One Time Settlement scheme was in force, it convened a meeting on 25.12.2001 with the bank Officers for settlement and to work out the modalities. In that meeting, the total liability of the petitioner was arrived at Rs.30,50,000/-. Further, the petitioner was granted liberty to identify the purchasers from the depositors of the bank, and then, offer, sell, register and transfer the said flats in favour of the purchasers. The sale proceeds thereof, ie., the amounts under the deposits held by the purchasers were directed to be deposited and adjusted into the loan account towards the sale consideration of the flats. On 7.1.2002, the petitioner firm sent a letter requesting the 2nd respondent to provide a consent letter in approval of the above proposal, but there was no reply. Again

on 12.1.2002 it has sent another letter, but that was also not fructified. Thereafter, in view of the fact that another OTS scheme was introduced by the revised guidelines dated 15.04.2003, the petitioner submitted another letter, but the same was also rejected under the impugned order stating that the petitioner's firm is a willful defaulter and the case of the defaulters does not cover the scheme.

Learned counsel for the petitioner strenuously contended that there is no willful default committed by the petitioner, and in fact, the question as to whether the petitioner committed default or not cannot be decided in this writ petition.

In the counter filed by the respondents, it is asserted that the case of the petitioner was rejected as per Clause 1, sub-clause C (1) of the OTS guide lines and it contemplates that cases of willful default were not covered under the scheme.

Therefore, the whole case of the petitioner revolves around the fact as to whether the petitioner is a willful defaulter or not. Except stating that the petitioner is a willful defaulter, no details have been furnished by the respondents.

While admitting the writ petition on 15.12.2003 this Court granted interim stay subject to condition of the petitioner depositing an amount of Rs.10,00,000/- within a period of two weeks. On 20.07.2004, it was recorded that the learned counsel for the petitioner stated, they have complied with the order passed by this Court on 15.12.2003 and therefore, the said order was made absolute.

In view of the above, without expressing any opinion on merits, the respondents are directed to furnish the details as to how the petitioner can be called as a defaulter and whether petitioner's case is covered by Clause 1, sub-clause C (1) of the OTS guide lines for consideration under the OTS Scheme. After receiving such details, the petitioner shall submit his explanation within 15 days thereafter. On receipt of such explanation from the petitioner, the respondents shall consider the case and pass appropriate orders as per the OTS scheme dated 15.4.2003, within a period of two months. The amounts, if any, already paid by the petitioner shall be given credit to.

Writ petition is disposed of accordingly. No costs.

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07-12-2006

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